

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4884 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

CHETAN MANSUKHLAL MAKADIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4884 of 2002
MR PARITOSH CALLA for Petitioner No. 1
MR MIHIR H JOSHI for Petitioner No. 1
GOVERNMENT PLEADER for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2
..... for Respondent No. 3
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CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 27/06/2002

ORAL JUDGEMENT

Rule. Mr. H.S. Munshaw appearing on behalf of
respondents nos. 2 & 3 and Mr. Premal Joshi appearing

on behalf of respondent no. 1 waive service of rule.

2. The petitioner, an individual challenges order passed by the second respondent on 15th April, 2002 whereby his application for carrying out amendment of entry no. 282 dated 1st September, 1975 in the Register of Births and Deaths maintained by the third respondent is rejected. According to the petitioner, the name 'Nitesh' was mistakenly entered into the record at the behest of his maternal grandfather and the correct name was and ought to be 'Chetan'. There is no dispute as to the fact that the petitioner was born on 26th August, 1975 at Bhayavadar. The petitioner has produced various documents like school leaving certificate, identity card issued by the Election Commission of India, etc. in support of his stand that his correct name is 'Chetan' and not 'Nitesh' as erroneously entered in the record of respondent no. 3. The petitioner approached respondent no. 2 seeking necessary amendment/correction but by the impugned communication dated 15th April, 2002 respondent no. 2, relying upon the circular dated 31st December, 1999 rejected the application, inter alia, stating that he had no powers to carry out the said amendment in law.

3. Mr. Mihir Joshi appearing on behalf of the petitioner has placed reliance on a decision of this Court reported in 42 G.L.R 2484 and the decision of a Division Bench of this Court (Coram:- R.K. Abichandani & M.C. Patel, J.J.) rendered in Letters Patent Appeal No. 231/2001 dated 30th March, 2001 wherein the aforesaid reported decision came to be confirmed. Mr. Munshaw appearing on behalf of respondents nos. 2 and 3 stated that no error had been committed by the respondent authorities which would permit the respondent authorities to exercise the powers under Section 15 of The Registration of Birth and Deaths Act, 1969; that the entry in question has been made on the basis of the information supplied by the maternal grandfather of the petitioner and hence it was not possible to change the same at a later stage merely because the petitioner comes forward and states that a mistake had been committed in giving the name in the application for registration. According to Mr. Munshaw, if the interpretation, as canvassed by the petitioner, was to be accepted there would be danger of unscrupulous persons taking advantage of the same and hence the Court must not accept the plea of the petitioner; that the decisions on which reliance has been placed on behalf of the petitioner should be restricted to the facts of the said case and cannot be applied to the case at hand. Mr Premal Joshi, learned A.G.P., over and above adopting the contentions raised by

Mr. Munshaw, submitted that the decision of the Division Bench rendered by this Court is subject matter of appeal before the Supreme Court of India and the matter is yet pending.

4. The contentions raised on behalf of the respondents by Mr. Munshaw have been squarely dealt with by the aforesaid decisions of this Court and it is not possible to take any other view of the matter. As laid down by the Division Bench of this Court the phrase 'erroneous in form or substance' is of wide amplitude and envisages a situation where an error might have been committed either by the authority or by the applicant. It is not possible to read any restriction in the provision, the language being plain and clear. As regards the other contention of advantage being taken by unscrupulous elements, suffice it to state that it would always be open to the respondent authorities to take action in accordance with law on the basis of the facts and evidence which may come on record. Interpretation of a provision cannot be guided by apprehension of a particular authority.

5. The reliance by the respondent authorities on the circular dated 31st December, 1999 is misplaced inasmuch as the said circular envisages an entirely different situation and is not applicable to the case at hand.

6. In light of what is stated hereinbefore, this application is required to be allowed. Respondents nos. 2 and 3 are directed to amend entry no. 282 dated 01.09.1975 in the Register of Births and Deaths maintained by the third respondent after carrying out necessary enquiries in accordance with law. This exercise shall be completed within a period of four weeks from today.

7. Rule made absolute. There shall be no order as to cost.

(D.A. MEHTA, J.)